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January 23, 2023

**BY ECF**

The Honorable Michael A. Hammer, U.S.M.J.  
United States District Court for the District of New Jersey  
Martin Luther King Federal Bldg. & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

**Re: *Merck & Co., Inc., et al. v. Merck KGaA*, Civil Action No. 16-266(ES/MAH)**

Dear Judge Hammer:

This firm, along with Blank Rome LLP, represents Defendant Merck KGaA in the above-referenced matter, and we write concerning Your Honor's December 19, 2022 Order scheduling a settlement conference before Your Honor via Zoom on February 10, 2023 (ECF No. 212).

The Order indicates that Your Honor determined that the conference should proceed by Zoom in order "[t]o accommodate the schedules of counsel and Mr. Kölle [Merck KGaA's lead negotiator and chief internal trademark counsel]." Although we very much appreciate that accommodation and courtesy, we respectfully request that the settlement conference be conducted in person at the courthouse in Newark instead.

We are pleased to report that the trial between the parties in Singapore, at which Mr. Kölle's attendance would have been required, has now been settled. Mr. Kölle is thus now available to travel to the United States for a settlement conference in this matter. He is willing – indeed eager – to make the international trip because Merck KGaA believes that an in-person conference has the greatest likelihood of being successful and is committed to making the most of the opportunity.

The parties have already engaged in numerous in-person settlement meetings over the past few months, and they are scheduled to do so again in Germany on January 25 and 26. In Merck KGaA's experience, these past few in-person meetings have yielded substantial progress, and meeting in person has been key to working toward finding common ground on some of the thornier issues that remain outstanding – particularly given Plaintiffs' insistence that any settlement of their U.S. litigation must be folded into a larger "global" settlement.

Plaintiffs were unwilling to join in this request, stating that changing arrangements now would add unnecessary travel time and costs. However, the travel burdens and costs associated with an in-person conference are much more significant for Merck KGaA, based in Germany, than for Plaintiffs, who are based in New Jersey. We do not expect that meeting in person would impose any significant burden on Plaintiffs or their counsel. While remote conferences and

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meetings are certainly functional, lived experience in this dispute with these parties has shown us that in-person meetings tend to be much more productive.

We therefore respectfully request that the Court amend its prior Order to provide that the February 10 conference be conducted in person.

We thank the Court for its attention to this matter and to its consideration of this request.

Respectfully submitted,

By: /s/ Megan K. Bannigan  
Megan K. Bannigan

cc (by ECF): All Counsel of Record